

CONTINUITY IN REPRESENTATION ACT OF 2003

DECEMBER 8, 2003.—Ordered to be printed

Mr. NEY, from the Committee on House Administration,  
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2844]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 2844) to require States to hold special elections to fill vacancies in the House of Representatives not later than 21 days after the vacancy is announced by the Speaker of the House of Representatives in extraordinary circumstances, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Continuity in Representation Act of 2003”.

**SEC. 2. REQUIRING SPECIAL ELECTIONS TO BE HELD TO FILL VACANCIES IN HOUSE IN EXTRAORDINARY CIRCUMSTANCES.**

Section 26 of the Revised Statutes of the United States (2 U.S.C. 8) is amended—

(1) by striking “The time” and inserting “(a) IN GENERAL.—Except as provided in subsection (b), the time”; and

(2) by adding at the end the following new subsection:

“(b) SPECIAL RULES IN EXTRAORDINARY CIRCUMSTANCES.—

“(1) IN GENERAL.—In extraordinary circumstances, the executive authority of any State in which a vacancy exists in its representation in the House of Representatives shall issue a writ of election to fill such vacancy by special election.

“(2) TIMING OF SPECIAL ELECTION.—A special election held under this subsection to fill a vacancy shall take place not later than 45 days after the Speaker of the House of Representatives announces that the vacancy exists, unless a regularly scheduled general election for the office involved is to be held at any time during the 75-day period which begins on the date of the announcement of the vacancy.

“(3) NOMINATIONS BY PARTIES.—If a special election is to be held under this subsection, not later than 10 days after the Speaker announces that the vacancy

exists, the political parties of the State that are authorized to nominate candidates by State law may each nominate one candidate to run in the election.

“(4) EXTRAORDINARY CIRCUMSTANCES.—

“(A) IN GENERAL.—In this subsection, ‘extraordinary circumstances’ occur when the Speaker of the House of Representatives announces that vacancies in the representation from the States in the House exceed 100.

“(B) JUDICIAL REVIEW.—If any action is brought for declaratory or injunctive relief to challenge an announcement made under subparagraph (A), the following rules shall apply:

“(i) Not later than 2 days after the announcement, the action shall be filed in the United States District Court having jurisdiction in the district of the Member of the House of Representatives whose seat has been announced to be vacant and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.

“(ii) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives.

“(iii) A final decision in the action shall be made within 3 days of the filing of such action and shall not be reviewable.

“(iv) The executive authority of the State that contains the district of the Member of the House of Representatives whose seat has been announced to be vacant shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the announcement of such vacancy.”.

Amend the title so as to read:

A bill to require States to hold special elections to fill vacancies in the House of Representatives not later than 45 days after the vacancy is announced by the Speaker of the House of Representatives in extraordinary circumstances, and for other purposes.

#### PURPOSE OF THE LEGISLATION

H.R. 2844, the Continuity in Representation Act of 2003, establishes a framework for conducting expedited special elections to fill House vacancies resulting from a catastrophic terrorist attack or other extraordinary circumstances. The purpose of H.R. 2844 is to ensure that a functioning House of Representatives would be in place with the ability to operate with legitimacy in the wake of a potential catastrophic terrorist attack.

Ever since the terrible and fateful morning of September 11, 2001, the American people have become painfully aware of the destructive intent of our country’s terrorist enemies as well as the increasingly sophisticated and devastating methods by which they carry out their deadly work. The possibility that terrorists could detonate a nuclear, chemical, or biological weapon of mass destruction in our Nation’s capital—annihilating major portions of our federal government and potentially killing dozens or hundreds of Members of Congress—is one that we cannot ignore and is the reason why the Committee seeks to move the process forward by reporting this important legislation.

In favorably reporting H.R. 2844, the Committee takes no position on any proposed constitutional amendments that would provide for the appointment of temporary replacements to fill vacant House seats because amendments to the Constitution are outside the Committee’s jurisdiction.

#### SUMMARY OF THE LEGISLATION

H.R. 2844, as amended, provides for expedited special elections to be held in “extraordinary circumstances.” Specifically, this legislation requires that within 45 days of the Speaker of the House of Representatives announcing that more than 100 vacancies exist in

the membership of the House, the executive authority of a State in which a House vacancy exists shall hold a special election to fill such vacancy.

The original version of H.R. 2844 contained a 21-day timeframe for holding a special election after the announcement of extraordinary circumstances. Increasing this time period to 45 days was deemed necessary to accommodate the concerns of many election officials who felt that 21 days was too short and may not have allowed for adequate preparation. The majority opinion of election officials appears to be that 45 days would provide sufficient time to plan and prepare for an expedited special election.

Under H.R. 2844, as amended, each political party authorized by state law to nominate candidates would have up to 10 days following the Speaker's announcement to nominate a candidate to run in the special election. The time period for party nominations in the original version of H.R. 2844 was 14 days. The shortened party nomination period would provide additional time on the backend for election officials to print ballots, test election systems, recruit and train poll workers, etc., while still permitting party officials adequate time to make candidate nominations.

H.R. 2844, as amended, also provides that if a state is scheduled to hold a general election within 75 days of the Speaker's announcement of more than 100 vacancies, that state would not be required to schedule an expedited special election, thus in essence, affording a 30-day extension to such states. The original version of H.R. 2844 provided a similar 30-day extension—from 21 to 51 days—for states whose election machinery was already in motion.

Any legal action challenging the announcement of more than 100 vacancies made by the Speaker would have to be filed within two (2) days of the announcement in the United State District Court having jurisdiction over the congressional district whose seat has been declared to be vacant. Such a challenge would be heard by a three-judge panel convened pursuant to 28 U.S.C. §2284, and a copy of the complaint would need to be delivered to the Clerk of the House of Representatives. The executive authority of the relevant state would have the right to intervene either in support of or opposition to the challenge. A final decision by the panel would be required to be issued within three (3) days of the filing and would not be reviewable.

H.R. 2844, as amended, deletes a provision in the original version of the bill that stated that the Speaker's announcement could not be appealed. After discussing this matter with the House Parliamentarian, it was determined that this provision was unnecessary since it would be duplicative of current House rules. So to avoid any needless confusion, the provision was taken out by the amendment.

## COMMITTEE CONSIDERATION OF THE LEGISLATION

## INTRODUCTION AND REFERRAL

On July 24, 2003, Mr. Sensenbrenner, Mr. Dreier, Mrs. Miller, Mr. Cole, Mr. Chabot, and Mr. Paul introduced H.R. 2844,<sup>1</sup> which was referred to the Committee on House Administration.

## HEARINGS

The Committee on House Administration held one hearing on the issue of the continuity of the House of Representatives in the event of a catastrophic terrorist attack or other extraordinary circumstances.

On September 24, 2003, the Committee held its hearing on this matter.

Members present: Mr. Ney, Mr. Ehlers, Mr. Linder, Mr. Larson, Mr. Brady.

Witnesses: The Honorable James Sensenbrenner, Chairman, Committee on the Judiciary; The Honorable David Dreier, Chairman, Committee on Rules; The Honorable Martin Frost, Ranking Democratic Member, Committee on Rules; The Honorable Brian Baird, Member of Congress; the Honorable Candice Miller, Member of Congress; The Honorable Mary Kiffmeyer, the Minnesota Secretary of State; R. Doug Lewis, Executive Director, Election Center; Donald R. Wolfensberger, Director, Congress Project, Woodrow Wilson International Center for Scholars; Thomas E. Mann, W. Averell Harriman Chair and Senior Fellow in Governance Studies, Brookings Institution; Norman Ornstein, Resident Scholar, American Enterprise Institute.

## MARKUP

On Wednesday, November 19, 2003, the Committee met to mark up H.R. 2844. The Committee favorably reported H.R. 2844, as amended, by a record vote (4–3), a quorum being present.

## MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

## COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the committee report.

*Amendment in the nature of a substitute*

Offered by Mr. Ney. The first vote during the markup came on the amendment in the nature of a substitute offered by Mr. Ney.

The amendment altered the original version's timeframes for conducting expedited special elections and deleted an extraneous provision.

The vote on the amendment was 4–3 and the amendment was agreed to.

<sup>1</sup>Mr. Conyers signed on as a co-sponsor on September 10, 2003. Mr. Bartlett did the same on October 7, 2003.

Member	Yes	No	Present
Mr. Ney .....	X	.....	.....
Mr. Ehlers .....	X	.....	.....
Mr. Mica .....	X	.....	.....
Mr. Linder .....	X	.....	.....
Mr. Larson .....	.....	X	.....
Ms. Millender-McDonald .....	.....	X	.....
Mr. Brady .....	.....	X	.....
Total .....	4	3	.....

The Committee then voted to report H.R. 2844 favorably, as amended. The vote to report favorably was approved by recorded vote (4–3).

Member	Yes	No	Present
Mr. Ney .....	X	.....	.....
Mr. Ehlers .....	X	.....	.....
Mr. Mica .....	X	.....	.....
Mr. Linder .....	X	.....	.....
Mr. Larson .....	.....	X	.....
Ms. Millender-McDonald .....	.....	X	.....
Mr. Brady .....	.....	X	.....
Total .....	4	3	.....

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### GENERAL PERFORMANCE GOALS AND OBJECTIVES

The Committee states, with respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that the goal and objective of H.R. 2844 is to ensure that a functioning House of Representatives would be in place with the ability to operate with legitimacy in the wake of a catastrophic terrorist attack or other extraordinary circumstances.

#### CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article 1, Section 4 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

#### FEDERAL MANDATES

The Committee states, with respect to section 423 of the Congressional Budget Act of 1974, that the bill does not include any significant Federal mandate.

#### PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a

committee statement on the extent to which the bill or joint resolution is intended to preempt state or local law. The Committee states that H.R. 2844 preempts state and local laws regarding the timing of holding special elections to fill vacancies in the House of Representatives in the event of extraordinary circumstances, unless such state and local laws otherwise are compliant or otherwise consistent with the timeframes for holding expedited special elections set forth in H.R. 2844.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, December 1, 2003.*

Hon. ROBERT W. NEY,  
*Chairman, Committee on House Administration,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2844, the Continuity in Representation Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

ELIZABETH M. ROBINSON,  
(For Douglas Holtz-Eakin, Director).

Enclosure.

#### *H.R. 2844—Continuity in Representation Act of 2003*

Summary: H.R. 2844 would provide for the continuity of the House of Representatives if the Speaker of the House announced that there were “extraordinary circumstances”—effectively 100 or more vacancies in the House of Representatives. The bill would require states to hold special elections to fill vacancies in the House of Representatives within 45 days of such an announcement. The bill also would provide for judicial review of challenges to the announcement of extraordinary circumstances. CBO estimates that enacting H.R. 2844 would have no significant impact on the federal budget.

By requiring states to hold elections within 45 days of an announcement of “extraordinary circumstances,” H.R. 2844 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the costs of that mandate over the next five years would not exceed the threshold established in that act (\$60 million in 2004, adjusted annually for inflation).

H.R. 2844 contains no new private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: CBO estimates that enacting H.R. 2844 would have no significant impact on the federal

budget over the next several years. Although the bill could affect the timing and amounts spent on Members' salaries (which are classified as mandatory) and office expenses (which are subject to appropriation), CBO expects that any such impact is unlikely to occur and would be minor in any event.

Intergovernmental mandates contained in the bill: H.R. 2844 would require States to hold elections within 45 days after an announcement by the Speaker of the House that there are "extraordinary circumstances"—effectively 100 or more vacancies in the House of Representatives—unless a regularly scheduled general election would occur within 75 days. This intergovernmental mandate would require 40 states to adopt a quicker time frame than they currently have for holding general elections in the event of a vacancy that does not coincide with a regularly scheduled election, and some states would need to amend their state constitutions. Further, the bill would likely prohibit states from holding primaries—as required by law in some states—for two reasons. First, the short time frame for the general election would logistically prohibit the holding of a primary, and second, political parties would be required to furnish a candidate within 10 days of the announcement of extraordinary circumstances.

Estimated direct costs of the mandates to state and local governments: Based on information from state and local election professionals, CBO estimates that the cost to run a special election ranges from \$200,000 to \$500,000 per district (in 2004 dollars), depending on the circumstances and location of the special election, the total number of special elections being held nationwide, and other factors. In the absence of the bill, states would hold elections and fill vacancies, but CBO estimates that the new requirements and short time frame required by the bill would likely generate significant additional costs for states. However, the likelihood is small that, over the next five years, events would occur triggering the provisions in H.R. 2844. Even if such an event were to occur, the additional costs for special elections may not exceed the threshold established in UMRA (\$60 million in 2004, adjusted annually for inflation).

Estimated impact on the private sector: H.R. 2844 contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Impact on State, Local, and Tribal Governments: Sarah Puro; Federal Costs: Deborah Reis; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget and Analysis.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

## SECTION 26 OF THE REVISED STATUTES OF THE UNITED STATES

SEC. 26. **[The time]** (a) *IN GENERAL.*—*Except as provided in subsection (b), the time for holding elections in any State, District, or Territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and Territories respectively.*

(b) *SPECIAL RULES IN EXTRAORDINARY CIRCUMSTANCES.*—

(1) *IN GENERAL.*—*In extraordinary circumstances, the executive authority of any State in which a vacancy exists in its representation in the House of Representatives shall issue a writ of election to fill such vacancy by special election.*

(2) *TIMING OF SPECIAL ELECTION.*—*A special election held under this subsection to fill a vacancy shall take place not later than 45 days after the Speaker of the House of Representatives announces that the vacancy exists, unless a regularly scheduled general election for the office involved is to be held at any time during the 75-day period which begins on the date of the announcement of the vacancy.*

(3) *NOMINATIONS BY PARTIES.*—*If a special election is to be held under this subsection, not later than 10 days after the Speaker announces that the vacancy exists, the political parties of the State that are authorized to nominate candidates by State law may each nominate one candidate to run in the election.*

(4) *EXTRAORDINARY CIRCUMSTANCES.*—

(A) *IN GENERAL.*—*In this subsection, “extraordinary circumstances” occur when the Speaker of the House of Representatives announces that vacancies in the representation from the States in the House exceed 100.*

(B) *JUDICIAL REVIEW.*—*If any action is brought for declaratory or injunctive relief to challenge an announcement made under subparagraph (A), the following rules shall apply:*

(i) *Not later than 2 days after the announcement, the action shall be filed in the United States District Court having jurisdiction in the district of the Member of the House of Representatives whose seat has been announced to be vacant and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.*

(ii) *A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives.*

(iii) *A final decision in the action shall be made within 3 days of the filing of such action and shall not be reviewable.*

(iv) *The executive authority of the State that contains the district of the Member of the House of Representatives whose seat has been announced to be vacant shall have the right to intervene either in support of or opposition to the position of a party to the case regarding the announcement of such vacancy.*

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOUSE ADMINISTRATION,  
*Washington DC, December 8, 2003.*

On November 19, 2003, the House Administration Committee convened and favorably reported H.R. 2844, the Continuity in Representation Act of 2003. Attached, you will find the Majority and Minority views for submission into the Congressional Record.

BOB NEY, *Chairman.*

MINORITY VIEWS OF JOHN B. LARSON OF CONNECTICUT,  
JUANITA MILLENDER-McDONALD OF CALIFORNIA AND  
ROBERT A. BRADY OF PENNSYLVANIA

The House Administration Committee ordered H.R. 2844 reported on a 4–3 vote with virtually no substantive explanation offered by the Majority, either at the markup or in the committee report, about what the bill actually does or why it is needed. In our view, H.R. 2844 would more likely result in additional disruption and confusion, rather than improvement, in the way states conduct special elections. The bill also does not address other significant issues relating to the continuity of Congress, some of which are not within the jurisdiction of our committee, which suggests the need for a multi-track approach to the entire range of issues and the coordination of such an effort by the leadership of Congress.

INTRODUCTION

H.R. 2844 would exercise Congress' powers under Article I, Section 4, Clause 1 of the Constitution to alter existing state laws which set the "Times, Places and Manner" of elections to the House of Representatives to change the way special elections to fill vacancies are conducted nationwide. The bill's provisions would take effect only under "extraordinary circumstances", which is defined by the legislation as being at any time after the Speaker of the House announces that the number of vacancies in the body exceeds 100.

Ostensibly, by shortening the time frame for the conduct of such elections to a maximum of 45 days after a vacancy is declared, the sponsors claim that the legislation would bring the House back to full strength following a catastrophe more rapidly than if existing state laws, which vary widely, were utilized.

Unfortunately, H.R. 2844 has serious conceptual and substantive flaws. It also ignores many of the major issues affecting continuity of the Congress which must be addressed if our democratic system is to continue to function in the aftermath of a future crisis. Indeed, there is concern that moving this bill at this time is intended to preempt consideration of other proposals which deserve a significant debate in Congress, such as constitutional amendments. Members may not agree with some or all of these proposals, and they are far more difficult to craft than the slipshod process which produced H.R. 2844, but they are worthy of continued discussion.

PRINCIPAL FLAWS

The provisions of H.R. 2844 are excessively vague, even as it preempts laws in all 50 states which may conflict with its stated purpose. The Committee has not established a record or collected data on what these state laws might be, or of what the effects of preemption might be. The bill could also interfere with the operation of existing Federal laws which guarantee absentee voting rights,

and conflict with previous court decisions and consent decrees on these subjects. None of these problems have been examined by the House Administration Committee.

For example, if the bill is enacted, it is unclear if states can still use their existing laws to conduct special elections. According to the committee report, they may not “\* \* \* unless such state and local laws otherwise are compliant or otherwise consistent with the timeframes for holding expedited special elections set forth in H.R. 2844”. This is a formulation tailor-made for confusion and litigation at a time of national crisis. States may be required to change laws which conflict with the bill’s objectives. Would the states do this? The bill provides no incentives for such state action until after a crisis has begun, when it might be too late to bring the states’ election structures into timely compliance.

If the states do change conflicting laws, it is unclear whether the bill’s provisions can secure the nomination and election of candidates within the specified 45-day timeframe. Enactment of this bill might leave states with no way to fill House vacancies at a time when the nation faces potentially dire conditions disrupting the functions of government.

The bill also would not provide any remedy for circumstances involving congressional disability, which could leave the House, under certain adverse conditions, without a quorum for 45 days or more. Without a functioning House, the entire legislative process in Congress would be paralyzed. The House could, theoretically, function with a small “rump” of Members as long as a majority quorum of those who might be “chosen, living and sworn” at any particular point in time could assemble, but such a situation would be undesirable because the new entity would likely be unrepresentative—geographically, politically and ideologically—compared to a fully-constituted House.

Any circumstances involving the Senate in the aftermath of a catastrophe are not addressed by this bill. The Senate does not have the problem the House does in reconstituting itself because the 17th Amendment to the Constitution allows state legislatures to empower governors to make temporary appointments “\* \* \* until the people fill the vacancies as the legislature may direct”, and nearly all states allow the governor such authority.

However, like the House, the Senate lacks any mechanism to deal with the replacement of its disabled members, and the disability of a substantial number of representatives and senators under certain conditions could threaten the existence of a quorum in one or both chambers. The issue of disability in the House and Senate probably requires a constitutional amendment to address, an issue of major controversy in the conflux of “continuity” issues, but one not within the jurisdiction of the House Administration Committee.

In sum, H.R. 2844 sets impractical deadlines, ignores the constitutional rights of candidates to run for election and of voters to participate in elections, and would likely create confusion in the aftermath of a national catastrophe when the country needs the stability of established constitutional processes and the legitimacy of the rule of law.

The bill essentially creates a procedure that may be little more than a shell, calls it a “special election”, and leaves states to address the confusion it creates in its wake.

#### CONTINUITY OF CONGRESS

The bill’s narrow focus ignores broader questions of congressional continuity, such as whether it might be possible to make the House operational again in a period of days—rather than months—to respond to the requirements for emergency legislation, congressional oversight and consultation with the executive branch in the immediate aftermath of a catastrophe.

The American people must be able to count on a functioning Congress in the wake of a catastrophic event. Two days after 9/11, Congress passed legislation expediting benefits for public safety officers killed or injured in the line of duty. Three days after 9/11, Congress appropriated \$40 billion in emergency funds and approved legislation supporting the use of military force. A week later, Congress enacted important legislation affecting our economy and securing the air transport system, and compensating the victims of the 9/11 attacks. Had events unfolded differently, none of this legislation might have been enacted in a timely fashion. Or the President might have usurped constitutional powers of Congress, hoping for subsequent ratification of his actions.

As noted, the bill does not address the problem of disabled Members of Congress. And while it appears to set specific timetables for the conduct of special elections, the bill actually would require states to hold elections within 45 days irrespective of the practical mechanics of conducting them. It would also ignore requirements, derived from Federal and state law and upheld in court decisions, to allow candidates to qualify for the ballot, and to allow voters to be able to participate in the election.

#### RUSH TO JUDGMENT

The normal process a committee follows in considering whether to report a bill to the House is to hear testimony from witnesses, study the bill, draft appropriate amendments or a new bill, and debate the substance of the legislation at a committee markup.

Regrettably, only the first step was followed in the case of H.R. 2844. The committee held a hearing on September 24, 2003, which thoroughly analyzed issues of congressional continuity, including the possible consideration of constitutional amendments, which are not within the jurisdiction of our committee. The hearing revealed the complications which might result from altering election procedures in each of the states without first obtaining a thorough working knowledge of how they operated in practice.

Even as they were voting to favorably report the bill from the Committee on House Administration on November 19, 2003, it was apparent from the debate that the Majority members didn’t understand how special elections conducted pursuant to H.R. 2844 would work. That alone is more than sufficient reason for the House to reject this bill as premature, but there are plenty of additional reasons which we will discuss further.

Why, then, did the Committee proceed to report it favorably? We believe there are two reasons:

First, pressure from the Republican leadership and senior committee chairs intent on dampening momentum for other types of proposals which attempt to grapple more comprehensively with the problem of how to reconstitute the House of Representatives following a catastrophe, such as a constitutional amendment which might permit temporary appointments to be made to replenish the House; and

Second, a reluctance to face the prospect of mass Congressional casualties. The reason the issue of congressional continuity has not yet reached critical mass is that Members are reluctant to confront the prospect of their own mortality, and to deal with the unpleasant mechanics and technical details of their own demise or potential incapacity. Unfortunately, our adversaries are constantly thinking about just such things, as we saw on September 11. We must demonstrate similar intensity.

Confronted with questions about our own mortality, denial is a natural reaction. Unfortunately, for legislators elected to find solutions to problems, it is not an acceptable one.

Even the nonpartisan Congressional Budget Office has taken a "head in the sand" approach to the economic analysis of this bill, noting in its cost estimate accompanying this report that "\* \* \* the likelihood is small that, over the next five years, events would occur triggering the provisions of H.R. 2844." After the events of September 11, 2001, no one can make such an assumption.

We want to stress that our concerns with this bill are not partisan. It is simply a poorly written piece of legislation. Congressional continuity is not a partisan issue. No party gains an advantage when hundreds of Members may be dead, incapacitated, or confined to hospitals or burn wards.

There are Members of differing views on all sides of all aspects of these issues. If constitutional amendments and other relevant legislation were considered on the House floor in a carefully structured manner, Members might be treated to an extraordinary debate about the organization of our government and the role of the House. Unfortunately, this bill's supporters are using it as a way to shunt aside the major issues, while pretending to take action.

We do not oppose the idea of Federal legislation expediting House special election processes in the states, or encouraging the states to do so themselves. On the contrary, we encourage constructive action at both levels of government and believe that debate in the states, and in individual congressional districts, should be encouraged by Members through public forums, newsletters and other means. However, rushing through a bad bill without consulting with the states will not yield constructive results.

Members who may support constitutional amendments are taking widely varying approaches. Representative Larson of Connecticut plans to introduce a constitutional amendment which would allow state legislatures or, if they fail to act, state governors, to appoint temporary members to serve until special elections are held. Representative Baird of Washington has introduced H.J. Res. 77, which would allow Members to leave lists of potential successors with state governors to choose temporary replacements. Senator Cornyn of Texas has introduced S.J. Res. 23, a constitutional

amendment, and S. 1820, hypothetical enacting legislation derived from the amendment, which would define a number of possible methods for temporarily filling House seats, leaving it to individual states to decide.

Any such proposals, if considered in the House, would fall under the jurisdiction of the House Judiciary Committee. The Judiciary Subcommittee on the Constitution held a hearing on February 28, 2002, but Representative Sensenbrenner, chairman of the full Judiciary Committee, informed the House Administration Committee during testimony at our hearing that there would be no further consideration of such proposals in the 108th Congress by his committee.

It is most unfortunate that the Judiciary Committee chairman is shutting off debate on the most serious form of legislation—constitutional amendments—in his own committee, while promoting a defective alternative in ours. But closing and locking the Judiciary Committee door does not excuse action in haste by the House Administration Committee.

#### PROVISIONS OF THE BILL

H.R. 2844, as originally introduced, called for special House elections around the nation to be held within 21 days of a catastrophe. But this figure was so unrealistically truncated that, during the House Administration Committee's hearing, the sponsor backed away from it. H.R. 2844, as ordered reported, was amended by a substitute presented to the Majority by Representative Sensenbrenner, and then adopted as a committee amendment, which would require states which had vacancies in one or more of their seats in the House of Representatives to fill the seats within 45 days, under specified criteria, if at any time the number of House vacancies nationwide exceeded 100.

While 45 days is at least an improvement over the 21 days originally proposed in H.R. 2844 as introduced, the substitute was apparently crafted based on one line in the testimony at our hearing of Mr. Doug Lewis, executive director of the Election Center, in which he summarized the views of state elections administrators polled by his organization:

While the responses indicated a variety of dates ranging from the shortest time \* \* \* of 35 days (after determination of who the candidates will be) to a period of four months, it appears that elections administrators feel they can conduct an election with as few as 45 days. However, the election officials would be far more confident that the interests of democracy would be best served by having up to 60 days to get the elections organized and held. Each additional day beyond the 45-day minimum time frame creates greater confidence in the process. (Page 3 of testimony of R. Doug Lewis, Executive Director of the Election Center, before the Committee on House Administration).

Mr. Lewis has not endorsed H.R. 2844.

The bill would also allow political parties in the states which are "authorized to nominate candidates" to select candidates within a 10-day period from the time a vacancy has been declared. It would

effectively ban party primaries due to the short timeframe. The bill makes no provision for what happens if the parties do not select candidates in this manner, or do so after the 10-day period has elapsed. Perhaps the states are expected to fill in the blanks, because the bill does not. The bill also makes no reference to minor parties and independent candidates, who must be allowed a means to attempt to qualify for the ballot under existing laws.

#### SPECIAL ELECTIONS

According to the Continuity of Government Commission of the Brookings Institution and the American Enterprise Institute, the average time to fill vacant House seats was 126 days between the 99th and 107th Congresses.<sup>1</sup> Some states do not hold special elections at all if, for example, vacancies occur at a certain threshold prior to the regular general election in even-numbered years. Others manage to conduct such elections with extraordinary speed—even more rapidly than envisioned by H.R. 2844—but we must be mindful of the fact that while such elections have passed muster and been accepted as legitimate by voters in those states, in others they would be regarded as an attempt to reduce voter and candidate participation in the process and be considered undemocratic. And they may improperly result in the exclusion or diminution of participation by absentee voters and Americans stationed or living abroad.

Congress should not rush to disregard the established political values of the states without a far more careful examination than was accorded to H.R. 2844.

In Minnesota, for example, only 29 days elapsed between the resignation of Representative Bob Bergland (D) on January 24, 1977, and the election of his successor, Representative Arlan Stangeland (R), on February 22, 1977. The state also managed to hold a primary election in between these dates on February 8, 1977. However, these were unique circumstances. Representative Bergland was President-elect Carter's nominee for Secretary of Agriculture, so it was known well in advance of the actual vacancy that he would be leaving the House of Representatives and triggering a special election, giving potential candidates and the district's election officials time to prepare; and Minnesota allows same-day voter registration, which permits voters to respond quickly to the special election process.

More typical are the circumstances which elected three Members of this committee in special elections.

The seat won by Representative Ehlers of Michigan became vacant on July 31, 1993, he won a Republican primary on November 2, and a special election on December 7. There were 129 days between the time of the vacancy and the time of the election, and it included a primary election.

The seat won by Representative Millender-McDonald of California became vacant on December 15, 1995; she won an unusual primary election on March 26, 1996, which also doubled as the final special election since all of the candidates she defeated were

<sup>1</sup>*Preserving Our Institutions: The First Report of the Continuity of Government Commission*, May, 2003, p. 7.

also Democrats, which negated the state's normal requirement to have all of the top finishers from different parties compete in a runoff. That vacancy lasted 101 days. But had a candidate of another political party entered the special election, a runoff would have had to have been held, which would have kept the seat vacant for several additional months.

The seat won by Representative Brady of Pennsylvania became vacant on November 11, 1997. He was nominated by a Democratic Party committee and then won a special election on May 19, 1998, timed to coincide with the state's primary for the regular two-year term. The total was 189 days, and that was without a primary.

So the special election with apparently the lowest degree of complexity—in Pennsylvania—resulted in the longest period of vacancy, because the state decided to allow a longer campaign and to consolidate the special election with others to save time and money. Pennsylvania balanced a variety of important interests in choosing the most appropriate method and timeframe within the established laws and political culture of the state.

Each of these elections took place in safe one-party districts, and all of them took longer than the time-frame envisioned by H.R. 2844. They serve as a warning that Congress must be especially cautious in concocting a truncated procedure for use in states which will have no advance knowledge—by definition—of a catastrophic event and impending House vacancies, where elections may be closely contested in competitive districts, and where the mechanics of election administration may be more cumbersome. However, they should also serve as a warning for states about the potential disadvantage of allowing excessively lengthy election periods. The special election structure should be balanced against the adverse consequences—loss of congressional representation—which might occur as a result in a time of crisis. States are in the best position to make such determinations.

#### CALIFORNIA AND TEXAS SPECIAL ELECTIONS DISRUPTED

We must also be mindful of eclectic procedures in a number of states, including our two largest states, California and Texas, which would be dismantled by this legislation. The California all-candidate primary leads to a runoff among the top vote getters from each party if no candidate initially receives a majority. In Texas, all candidates run irrespective of party, and the top two vote-getters irrespective of party compete in a runoff if no candidate initially receives a majority of the vote. Requiring political parties in those states to choose individual nominees—without any form of primary—would be both a radical change in the election process and disregard a political culture which has evolved to reduce the power of state and local party organizations.

#### MILITARY PERSONNEL AND AMERICANS ABROAD

H.R. 2844 completely ignores issues affecting military personnel and their families and Americans abroad, and would virtually ensure that many of them would be excluded from the special election process contemplated by the bill.

The total 45-day time frame in the bill between the declaration of a House vacancy and the conduct of a special election falls far

short of the recommended 45-day time for transmission and return of a completed ballot to and from an absentee voter recommended to the states by the Federal Voting Assistance Program (FVAP), an agency of the Department of Defense.

Under the terms of the bill, candidates of major parties would probably not even be known until 35 days prior to the date of the election, with additional time of uncertain duration required to deal with the issue of non-major party candidates and ballot preparation.

Members of the military and U.S. citizens living abroad are eligible to register and vote absentee in Federal elections under provisions of the Uniformed Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) (P.L. 99-410; 42 U.S.C. sec. 1973ff, et. seq.). The law was enacted to improve absentee registration and voting and to consolidate existing laws.<sup>2</sup>

The Overseas Citizens Voting Rights Act of 1975 guaranteed absentee registration and voting rights for citizens outside the U.S., whether or not they maintained a U.S. residence or address. Subsequently, UOCAVA, the National Defense Authorization Act of 2002 (P.L. 107-107) and the Help America Vote Act of 2002 (HAVA) (P.L. 107-252) added to and refined the provisions.

Under current Federal law, states must:

- Permit absent uniformed services voters, spouses and dependents and other overseas voters to vote absentee in all elections for Federal office, including general, primary, special and runoff elections. Voters may submit a single absentee ballot application to receive a ballot for each Federal election in a state during a year. HAVA subsequently extended the period covered by a single absentee ballot application to the next two regular general elections for Federal offices, and also prohibited states from refusing to accept a valid voter registration application on the grounds that it was submitted prior to the first date on which the state processes applications for the year.

- States must also accept and process any valid voter registration application from an absent uniformed services or overseas voter if the application is received not less than 30 days before the election.

- The law recommends that states accept the Federal Write-in Absentee Ballot for general elections to Federal offices if the voter has not received an absentee ballot in a timely manner. It also recommends that states accept the Federal Post Card Application to allow for simultaneous absentee registration and to request an absentee ballot.

So the trend in Federal law over the last few decades has clearly been to establish additional rights for absentee voters abroad, while admonishing states to comply with other useful procedures through their own laws and regulations. The Federal government has brought successful lawsuits or negotiated consent decrees involving states which have been, or which might be, unable to comply with legal requirements.

<sup>2</sup> See the CRS Report, "The Uniformed and Overseas Citizens Absentee Voting Act: Background and Issues", by Kevin J. Coleman, updated January 30, 2003.

H.R. 2844 could jeopardize these gains with its 45-day deadline for an election to occur, irrespective of other legal or practical considerations. It is silent on the issue of absentee voting. Its potential impact on and inter-relationship with UOCAVA and the other relevant Federal statutes are unclear and confusing at best, and contradictory at worst.

The committee report states:

\* \* \* H.R. 2844 preempts state and local laws regarding the timing of holding special elections to fill vacancies in the House \* \* \* in the event of extraordinary circumstances, unless such state and local laws otherwise are compliant or otherwise consistent with the timeframes for holding expedited special elections set forth in H.R. 2844.

Additional information on this topic appears in the Exhibits following the main text.

#### DICTATING TO THE STATES

The Majority evidently intends, if H.R. 2844 passes, to claim that it has addressed the issue of ensuring the continuity of Congress in the event of catastrophe. It is true that the process of filling vacant House seats in some states may appear excruciatingly slow, especially if the House is denuded of Members due to massive sudden deaths, or is threatened with loss of a quorum due to a combination of deaths and disability.

States would be well advised to reexamine their laws, as the House urged them to do when it adopted House Resolution 559 of the 107th Congress on October 10, 2002, barely more than one year ago. This resolution, which fell under the jurisdiction of our committee, was prompted by the efforts of a special working group appointed by the bipartisan House leadership and led by Representatives Cox of California and Frost of Texas.

The House Administration Committee has made no subsequent effort to assess the progress states have made in this area since passage of the non-binding House resolution. The odds are that very little action has occurred, but Congress should at least attempt to find out the reasons for states' inaction before rushing to impose a Federal statute which may require substantial changes in existing state laws and mandate additional costs on the states. At the very least, the committee should have asked the states for their opinions about the bill before considering it and ordering it reported.

Any Federal statute setting a single House special election procedure nationwide—and especially this one, which uses an unrealistic timeframe, which could conceivably bar third party and independent candidates from getting on the ballot, and which threatens the rights of absentee voters, Americans living abroad and military personnel and their families to participate in the political process—needs to be approached with extreme caution.

The Congressional Budget Office, in its estimate to accompany this report, notes that the bill contains an “intergovernmental mandate” pursuant to the Unfunded Mandates Reform Act (UMRA), and that “\* \* \* the new requirements and short time frame re-

quired by the bill would likely generate significant additional costs for states.”

CBO further notes that “This intergovernmental mandate would require 40 states to adopt a quicker time frame than they currently have for holding general elections in the event of a vacancy that does not coincide with a regularly scheduled election, and some states would need to amend their state constitutions. Further, the bill would likely prohibit states from holding primaries—as required by law in some states—for two reasons. First, the short time frame for the general election would logistically prohibit the holding of a primary, and second, political parties would be required to furnish a candidate within 10 days of the announcement of extraordinary circumstances.”

When Congress is ready to fully engage continuity issues—and the second session of the 108th Congress would be an excellent time to do so—the House Administration Committee could carefully craft a bill to provide states with a model statute, for example, to use for special elections. The states might be given the option of whether to employ a new Federal statute or their existing laws, or to revise their existing laws. In any case, states have a strong incentive to utilize procedures to improve their current practices, and to ensure that their House seats are filled as expeditiously as possible so that other states would not enjoy the advantage of representation in the House while theirs remained vacant.

#### UNANSWERED QUESTIONS

At the markup, Ranking Member Larson raised questions on a number of significant issues relating to H.R. 2844, which he read into the record. In response, Chairman Ney said “\* \* \* there are questions that have to be answered and need to be answered, and we will need to talk to the bill’s primary sponsor to get answers to these questions.”

Prior to the filing of this report, no response had been received from the bill’s chief sponsor, Representative Sensenbrenner. We restate and clarify these questions below, and include additional discussion for the information of Members.

Among possible problems with the legislation which were not addressed at the committee markup:

#### *How is the Bill’s “Trigger” Activated?*

The method for determining the number of vacancies required to activate the “extraordinary circumstances” trigger providing for the special election rules is not clear. H.R. 2844 assumes that the Speaker will make an announcement when more than 100 vacancies exist in the House, but the bill does not reference relevant House rules governing the Speaker’s announcements of vacancies, or possible actions of a Speaker pro tempore, a temporary presiding officer of lesser status who performs a variety of limited functions under House rules in the absence of a Speaker.

The bill also does not address what might happen if the Speakership is vacant at the time of “extraordinary circumstances”, and if a quorum is demonstrated not to be present in the House to elect a new Speaker or Speaker pro tempore.

A Speaker pro tempore selected from a list created by the departed Speaker to serve until the election of a Speaker or a Speaker pro tempore under clause 8(b)(3)(A) of House Rule I may only exercise such “authorities of the Office of Speaker as may be necessary and appropriate to that end” (the election of a new presiding officer), which may conflict with any potential grant of new authority which might be contemplated by the bill. This rule was adopted in the 108th Congress as one of the recommendations of the Cox-Frost Working Group in 2002, and has never been implemented, though the Speaker has submitted the requisite list of names of potential Speakers pro tempore to the Clerk.

Would a Speaker pro tempore selected pursuant to clause 8(b)(3)(A) have authority to make a specific announcement activating the provisions of H.R. 2844?

Would an announcement triggering special election processes in the states be considered “necessary and appropriate” to the election of a new Speaker if the position was vacant at the time?

A Speaker or Speaker pro tempore may announce adjustments to the whole number of the House, pursuant to clause 5(c) of Rule XX, in the event of the death, resignation, expulsion, disqualification or removal of Members, but he does not announce any specific number of vacancies, announce any threshold or trigger number, or take any action to specifically activate the provisions of a statute. The House notifies the executive authority of a state when a vacancy occurs in the membership from that state.

The bill does not specify how state executive authorities collectively would take notice when the total number of vacancies exceeds 100.

*How many House vacancies should be needed?*

The number of vacancies chosen to activate the trigger—exceeding 100—is arbitrary and should have been examined in greater detail by the committee. With 334 Members “chosen, living and sworn” at the time the provisions of H.R. 2844 would go into effect, the House would have ample Members to operate, and a quorum of 218 would not be threatened, unless a substantial number of the survivors were also disabled.

The House passes bills or motions with more than 100 Members absent under normal circumstances; for example, it did so four times on November 17, 2003, shortly before our committee markup, and is not uncommon as Congress is attempting to adjourn a session, or to go out for a lengthy recess.

*How is the issue of Disability of Members addressed?*

The bill does not address questions of disability, which can threaten a quorum under certain conditions in the aftermath of a catastrophe and paralyze the entire Congress.

The Constitution does not grant the Speaker, or the House itself, or a state, authority to declare a sitting Member disabled or to remove a sitting Member as a consequence of disability. A constitutional amendment is very likely the only method to create a new procedure to deal with instances in which Members are alive but non-functional. Members can always be expelled for any reason, assuming the House has a quorum to do so. But what happens if the

House lacks a quorum, or if the prospect still exists that disabled Members might eventually return to their duties?

In the 1981 case of Representative-elect Gladys Noon Spellman (D-MD), the House declared her seat vacant by simple majority vote after determining that she would not be able to appear to take the oath of office, one of the Constitution's requirements to become a Member. She was not a sitting Member of the House, so a two-thirds vote on expulsion was not required.

During our earlier hearing, Representative Sensenbrenner made various unsupported statements regarding incapacitation. He said that state law was controlling, and that Members could conceivably sign durable powers of attorney to allow others to activate their resignations. But there is no support in the Constitution, Federal law or House precedents for this kind of procedure, and it has never been attempted in our history.

Later in the hearing, Representative Sensenbrenner said that the Speaker could announce a vacancy based upon incapacitation to count toward the 101-seat trigger. But the Constitution does not permit this. As long as a Member has been duly elected and sworn, the only way to effect removal would be through expulsion.

*What happens if the number of House vacancies is reduced after the "trigger" is pulled but before special elections occur as provided by H.R. 2844?*

The bill does not address all possible conditions surrounding potential mass vacancies. If special elections were already in progress to fill vacancies under normal circumstances prior to a catastrophe, and as a result reduced the number of vacancies below 101, would special elections under the bill's provisions continue? Would the trigger, once pulled, be impossible to stop until all of the bill's requirements were executed?

*Could the bill's provisions invite additional election contests for House seats?*

If a state violates provisions of the statute, such as by missing the various timetables for nominating candidates by political parties, or for meeting the 45-day deadline for completing the special election process, would the qualifications of any Member chosen as a result of such a special election be open to challenge in the courts, or in the House, resulting in additional delays in filling vacant seats? If the bill creates an unrealistic timeframe and states fail to comply, potential challenges to election results could create instability when the country least needs it.

*Would absentee voters, military voters, and other Americans abroad be disadvantaged by the bill's timetables?*

The bill may violate provisions of the Uniformed and Overseas Citizens Absentee Voting Act and the Help America Vote Act, affecting the rights of Americans serving in the military, their families and other Americans living abroad, by creating a time-frame too short to allow compliance with the various requirements of these laws. The Department of Defense has requested that states allow a minimum of 45 days from the time ballots are finalized

—not from the time a vacancy is declared, as in this bill—to ensure the ability of these voters to fully participate in a Federal election.

How can military personnel and their families and other Americans living abroad become aware of a special election, request absentee ballots, receive them once candidates become known, and return them in the time frame contemplated by the statute? Does the bill simply assume that somehow everything will work out satisfactorily?

*Can Independent and Third Party candidates qualify for the ballot within the bill's timeframe?*

The legislation is silent about independent or non-major-party candidates. Assuming they could still attempt to run, they would be dependent on existing provisions of state laws which set qualifications and timeframes to get on the ballot, e.g. by collecting signatures. These provisions, which differ widely among the states, may no longer be viable within the scheme of H.R. 2844. But failure to allow such access, i.e. discriminating in favor of candidates of established major political parties, could result in challenges during the conduct of elections or to the election results.

*How would political parties nominate candidates?*

The bill authorizes, but apparently does not require (“may” is used in the text), political parties in a state which are authorized to nominate candidates to choose a nominee within 10 days. This method, with varying timeframes, is already used for special elections in some states, and the timeframe obviously precludes a primary.

What happens if a party can’t agree on a nominee, or misses the 10-day threshold? It is not clear what the alternative mechanism for selecting a party nominee might be. Surely it would not be desirable to create a situation where a major political party might be forced to, in effect, concede the election because it could not comply with the deadlines. In a variety of such cases in the past where party primaries were not held, there have been intense contests at party committee meetings or conventions to win nominations which in many cases would be tantamount to winning election to the House.

But, as noted earlier, in states which conduct primaries to choose nominees before holding a special election, or in states which hold special elections without regard to party—such as California and Texas—the scheme provided by the bill would radically change the political environment.

It is not clear what would happen if the states want to use some other method to choose party nominees but still have the special election within a 45-day period. Minnesota, in the 1977 special election discussed previously, held both a primary and special election within 28 days, but the primary occurred outside of the 10-day window for choosing party nominees established by H.R. 2844. Would such a process still be permitted?

*What happens after the special elections have occurred?*

The bill does not address issues of ballot counting, processing and certification, all of which are conducted pursuant to state laws,

which must be completed before winners can be declared and present themselves to the House to take the oath of office, thereby ending the vacancies in House seats. Seating in the absence of a certificate of election would be at the discretion of the House.

There would be a period of several weeks before states could properly certify the results of any special elections. States have laws relating to the receipt of absentee ballots and ballots from the military and others living abroad, and for counting provisional ballots, before a certification could occur. There is also the possibility of recounts of close races.

*What is the timeframe for legal action to resolve controversy over vacancies declared by the Speaker?*

In the section of the bill which falls under Judiciary Committee jurisdiction (section 2(b)(4)(B)), lawsuits which don't relate to the Speaker's announcement of vacancies are not subject to the two day and three day limits on bringing a case and rendering a decision. Litigants could conceivably seek an injunction against conduct of such elections due to alleged constitutional violations or violations of other relevant provisions of law, or of other provisions of the new statute. That could result in a substantial increase in the time it takes to actually conduct such elections.

#### EXHIBITS

Attached is a description of the Federal Voting Assistance Program (FVAP), an agency of the Department of Defense, reprinted from their website. ([www.fvap.gov](http://www.fvap.gov)):

##### *Exhibit #1*

The Federal Voting Assistance Program (FVAP) administers the federal responsibilities of the Presidential designee (Secretary of Defense), under the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA). The Act covers more than six million potential voters. The FVAP has three distinct goals. These are to:

1. Inform and educate U.S. citizens worldwide of their right to vote;
2. Foster voting participation; and
3. Protect the integrity of, and simultaneously enhance, the electoral process at the Federal, State and local levels.

The FVAP provides U.S. citizens worldwide a broad range of non-partisan information and assistance to facilitate their participation in the democratic process—regardless of where they work or live.

The UOCAVA requires that the states and territories allow certain U.S. citizens, as defined below, to register and vote absentee in elections for Federal office. These groups include:

- Members of the Uniformed Services (including Army, Navy, Air Force, Marine Corps, Coast Guard);
- Merchant Marine;
- Eligible family members of the above;
- Commissioned Corps of the Public Health Service, and Commissioned Corps of the National Oceanic and Atmospheric Administration;

- U.S. citizens employed by the Federal Government residing outside the U.S.; and
- All other private U.S. citizens residing outside the U.S.

Some states and territories also allow citizens covered by the UOCAVA to register and vote in state and local elections as well.

The FVAP also acts on behalf of the Secretary of Defense to administer the Federal responsibilities of the National Voter Registration Act (NVRA), which designates armed forces recruiting offices nationwide as voter registration agencies allowing eligible U.S. citizens to apply for voter registration, or apply to change voter registration data, at 6000 Armed Forces Recruitment Offices nationwide.

We accomplish our mission by providing services to:

- Thousands of military Voting Assistance Officers (VAOs) around the globe;
- More than 250 Embassy and Consulate VAOs;
- Hundreds of state officials;
- Nearly 13,000 local government officials;
- Hundreds of representatives of worldwide organizations and corporations;
- Personnel at 6,000 Armed Forces Recruiting Offices; and
- All citizens eligible to apply for voter registration, or change voter registration data at Armed Forces Recruitment Offices.
- In all, these total approximately 205 million U.S. citizens of voting age.

#### *Exhibit #2*

Attached below is an example of correspondence from the Federal Voting Assistance Program (FVAP) to the states (in this case, Rhode Island) recommending changes in state laws, regulations or policies affecting the handling of absentee ballots for military and overseas voters. The FVAP recommends that states allow a 45-day transit time for such voters to receive, vote and return their absentee ballots and recommends sample language for the states to consider.

#### *The Need for 45-Day Ballot Transit Time*

Rhode Island military and overseas voters continue to have an extremely short period of time to receive, vote, and return their absentee ballots in order to be counted (21 days). While electronic transmission of election materials offers an alternative to inadequate ballot transit time, insufficient ballot transit time through the mail remains the primary obstacle to timely delivery of absentee ballots for those who request them. Our post election surveys and Postal Service statistics indicate that a 45-day transit time is needed for absentee ballots sent through international mail or the military APO/FPO (overseas) post offices. This round trip transit time is especially necessary because of the remote location of many military personnel and overseas citizens such as sailors and marines aboard ship, airmen and sailors at isolated tracking sites around the world, as well as Department of State personnel and citizen employees of American multinational corporations in remote areas.

*Sample Language*

For all elections, the official charged with the printing and distribution of ballots and election materials shall print as many absentee ballots as may be necessary as soon as possible after receiving the information concerning candidates and measures to be voted on at an election, and balloting materials shall be mailed not later than the 45th day before the election.

*Emergency Authority for Chief Election Official*

During a period of a declared emergency or other situation where there is a short time frame for ballot transmission, it is recommended that Rhode Island's Chief Election Official have the authority in law to designate alternate methods for handling absentee ballots to ensure voters have the opportunity to exercise their right to vote. The Chief Election Official and the Federal Voting Assistance Program could mutually establish expeditious methods for handling absentee ballots including electronic transmission.

*Sample Language*

If a national or local emergency or other situation arises which makes substantial compliance with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable, such as a natural disaster or an armed conflict involving United States Armed Forces, or mobilization of those forces, including State National Guard and Reserve components, the Chief Election Official may prescribe, by emergency orders or rules, such special procedures or requirements as may be necessary to facilitate absentee voting by those citizens directly affected who otherwise are eligible to vote in the state.

The Chief Election Official shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.

JOHN B. LARSON.  
JUANITA MILLENDER-MCDONALD.  
ROBERT A. BRADY.

